



April 7, 2020

Re: Authority to Defer Local Tax Payments and Process for Doing So

Dear Local Government Officials:

The COVID-19 coronavirus has disrupted all of our lives, both personally and professionally. You have the challenge and trust to continue government operations during this time. To assist local governments and other public entities in navigating this ever-changing situation, LGA President Tim Spencer formed a special committee to enable advice regarding local government issues related to COVID-19.

The attached guidance, regarding authority and process to defer local tax payments, addresses an issue about which many localities are concerned. The LGA Tax Practice Group has prepared this guidance. We thank the Group's Chair Ara Tramblian and its many public and private members from across the Commonwealth, particularly Deborah Mallory and Andrew McRoberts, for their timely work on this matter.

Our goal, and that of our LGA colleagues, is to enable you to serve your residents by doing the public's business. We hope this guide will assist you.

Stay Healthy and Thank You for Your Service,

Sharon E. Pandak
Chair, COVID-19 Committee

cc: LGA President Timothy R. Spencer
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AUTHORITY TO DEFER LOCAL TAX PAYMENTS AND PROCESS FOR DOING SO

OVERVIEW

Only the governing body of the locality can make the decision to defer local tax payments.

There is no authority for administrative officials (e.g. director of finance, assessor) or elected officials (e.g. treasurer or commissioner of the revenue) to make those decisions, unless such authority is enacted by the General Assembly.

STATUTORY AUTHORITY

VA. CODE § 58.1-3916 (entitled "Counties, cities and towns may provide dates for filing returns, set penalties, interest, etc.") The language in § 58.1-3916 states that the statute is

the sole authority for local ordinances setting due dates of local taxes and penalty and interest thereon, and shall supersede the provisions of any charter or special act. (emphasis added.)

OTHER REFERENCES

1981-82 Va. AG 393 (holding that local government cannot forgive interest and penalty already accrued). Under Va. Code § 58.1-3916, the penalty becomes part of the principle of the tax owed.

Information to review or consider before discussing options for deferring tax payments:

- The current county, city or town code sections and/or ordinance(s) establishing due dates for the payment of local taxes.
- The current county, city or town code sections and/or ordinance(s) setting forth the penalty and/or interest percentages on delinquent taxes and the dates incurred.
- The current county, city or town code sections and/or ordinance(s) adopted to allow interest on prepayment of taxes, and how shifting the due dates may also impact the requirement to pay additional interest on prepayments under Va. Code § 58.1-3920.1.
- Trust taxes: The meals (a/k/a food and beverage), admission, and lodging (a/k/a transient occupancy) taxes are trust taxes and are not recommended to be pushed out for payment. The amount of the tax was collected by the business establishment on behalf of the locality at the time of each transaction (e.g., purchase of meal, payment for lodging room, admission to entertainment, etc.) and do not belong to the business. The taxes were paid by the consumer and are merely held *in trust* by the business establishment for the locality. Permitting the business to hold onto these funds, rather than remitting them timely, may result in their misappropriation. Virginia Code § 58.1-3833(C) states that:

All food and beverage tax collections and all meals tax collections shall be deemed to be held in trust for the county, city or town imposing the applicable tax. The wrongful and fraudulent use of such collections other

Sec. 3.7 – 66 & 3.7 – 67: Interest on Delinquent Taxes and Penalty for Nonpayment of Taxes

With the exception of real estate taxes on property within Appomattox County's territorial boundaries, pursuant to the Code of Virginia, § 58.1-3913, the treasurer shall commence to receive local taxes and levies as soon as he receives copies of the commissioner's books and continue to receive them up to and including December 5 of each year.

Real estate taxes on property within Appomattox County's territorial boundaries shall be due and payable to Appomattox County in two equal installments, the first installment to be paid no later than June 5 of each year and the second installment to be paid no later than December 5 of each year. The county treasurer shall give a notice to all taxpayers at least 14 days prior to June 5 of each year that real estate taxes are due and payable.

Any payment received shall be credited first against the most delinquent local account, the collection of which is not subject to a defense of any applicable statute of limitations. Delinquent local accounts which have been recorded in the office of the clerk of the county circuit court shall not be considered as accounts in the hands of the treasurer for collection, and the treasurer shall not be required to credit payments first against the delinquent accounts recorded in the clerk's office.

Due to the COVID-19 crisis, real property taxes for the first payment for year 2020 will be due on June 5, 2020. Furthermore, the taxes due on June 5, 2020 may be paid at anytime on or before August 5, 2020 with no penalty or interest due. This is a one-time adjustment and shall have no effect on future tax due dates. The Treasurer shall notify County taxpayers of the amended 2020 penalty and interest information as soon as possible.